

House Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 116

HOUSE BILL 2194

AN ACT

AMENDING SECTION 23-1023, ARIZONA REVISED STATUTES; RELATING TO WORKERS'
COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1023, Arizona Revised Statutes, is amended to
3 read:

4 23-1023. Liability of third person to injured employee;
5 election of remedies

6 A. If an employee WHO IS entitled to compensation under this chapter
7 is injured or killed by the negligence or wrong of another PERSON not in the
8 same employ, ~~such~~ THE injured employee, or in event of death ~~his~~ THE INJURED
9 EMPLOYEE'S dependents, may pursue ~~his~~ THE INJURED PERSON'S remedy against
10 ~~such~~ THE other person.

11 B. If the employee WHO IS entitled to compensation under this
12 chapter, ~~or his~~ THE EMPLOYEE'S dependents, ~~does~~ DO not pursue ~~his or their~~ A
13 remedy PURSUANT TO THIS SECTION against ~~such~~ THE other person by instituting
14 an action within one year after the cause of action accrues, ~~the claim~~
15 ~~against such other person shall be deemed assigned to the insurance carrier,~~
16 ~~or to the person liable for the payment thereof.~~ OR IF AFTER INSTITUTING THE
17 ACTION, THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS FAIL TO FULLY PROSECUTE THE
18 CLAIM AND THE ACTION IS DISMISSED, ALL OF THE FOLLOWING APPLY:

19 1. THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER MAY INSTITUTE AN
20 ACTION AGAINST THE OTHER PERSON.

21 2. ANY DISMISSAL THAT IS ENTERED FOR LACK OF PROSECUTION OF AN ACTION
22 INSTITUTED BY THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL NOT PREJUDICE
23 THE RIGHT OF THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER TO RECOVER THE
24 AMOUNT OF BENEFITS PAID.

25 3. IF THE STATUTE OF LIMITATIONS OF THE CLAIM IS ONE YEAR AFTER THE
26 CAUSE OF ACTION ACCRUES, THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER MAY
27 FILE THE ACTION PRIOR TO ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

28 4. ~~Such a~~ THE claim ~~so assigned~~ may be prosecuted or compromised by
29 the insurance carrier or the person liable for the ~~payment thereof,~~
30 SELF-INSURED EMPLOYER or may be reassigned in its entirety to the employee or
31 ~~his~~ THE EMPLOYEE'S dependents. After the reassignment, the employee WHO IS
32 entitled to compensation, or ~~his~~ THE EMPLOYEE'S dependents, shall have the
33 same rights to pursue the claim as if it had been filed within the first
34 year.

35 C. THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL PROVIDE THE
36 INSURANCE CARRIER OR THE SELF-INSURED EMPLOYER WRITTEN NOTICE OF THE
37 INTENTION TO BRING AN ACTION AGAINST A THIRD PARTY AND SHALL PROVIDE TO THE
38 INSURANCE CARRIER OR SELF-INSURED EMPLOYER TIMELY AND PERIODIC NOTICE OF ALL
39 PLEADINGS AND RULINGS CONCERNING THE STATUS OF THE PENDING ACTION. IN ANY
40 ACTION INSTITUTED BY THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS, THE INSURANCE
41 CARRIER OR THE SELF-INSURED EMPLOYER SHALL HAVE THE RIGHT TO INTERVENE AT ANY
42 TIME TO PROTECT THE INSURANCE CARRIER'S OR THE SELF-INSURED EMPLOYER'S
43 INTERESTS.

44 ~~G.~~ D. IF ~~he~~ THE EMPLOYEE proceeds against ~~such~~ THE other person,
45 compensation and medical, surgical and hospital benefits shall be paid as

1 provided in this chapter and the insurance carrier or other person liable to
2 pay the claim shall have a lien on the amount actually collectable from such
3 THE other person to the extent of such compensation and medical, surgical and
4 hospital benefits paid. This lien shall not be subject to a collection fee.
5 The amount actually collectable shall be the total recovery less the
6 reasonable and necessary expenses, including ~~attorneys'~~ ATTORNEY fees,
7 actually expended in securing such THE recovery. The insurance carrier or
8 person shall contribute only the deficiency between the amount actually
9 collected and the compensation and medical, surgical and hospital benefits
10 provided or estimated by ~~the provisions of~~ this chapter for such THE case.
11 Compromise of any claim by the employee or ~~his~~ THE EMPLOYEE'S dependents at
12 an amount less than the compensation and medical, surgical and hospital
13 benefits provided for shall be made only with written approval of the
14 ~~compensation fund, or of the person~~ INSURANCE CARRIER OR SELF-INSURED
15 EMPLOYER liable to pay the claim.

16 E. FOR PURPOSES OF THIS SECTION, THE COMMISSION SHALL HAVE THE SAME
17 RIGHTS AS AN INSURANCE CARRIER OR SELF-INSURED EMPLOYER.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.